

**REPORT - PLANNING COMMISSION MEETING  
May 13, 2004**

**Project Name and Number:** Fremont Retail (PLN2004-0199)

**Applicant:** Orchard Retail

**Proposal:** To consider a Preliminary Grading Plan for the development of a multi-tenant commercial center

**Recommended Action:** Approve based on findings and subject to conditions

**Location:** NE Auto Mall Parkway at Boscell Road

**Assessor Parcel Number(s):** 531-0220-32; 531-0220-33

**Area:** 1.64 acres

**Owner:** WP Investments

**Agent of Applicant:** Gary Hansen

**Consultant(s):** The Hagman Group (Architecture & Planning); Kier & Wright (Civil Engineers)

**Environmental Review:** The project is categorically exempt from environmental review per Section 15304(a) of the California Environmental Quality Act (CEQA) regarding minor grading.

**Existing General Plan:** General Industrial, Commercial/Industrial overlay

**Existing Zoning:** P-91-8

**Existing Land Use:** Vacant

**Public Hearing Notice:** Public hearing notification is applicable. A total of 14 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Auto Mall Parkway, Boscell Road, and Boyce Road. The notices to owners and occupants were mailed on April 30, 2004. A Public Hearing Notice was delivered to The Argus on April 26, 2004 to be published by April 29, 2004.

**Executive Summary:** The applicant has obtained a recommendation for approval for a Planned District Major Amendment for a Precise Plan for a retail-oriented multi-tenant commercial center, which is pending City Council action. An Easement Abandonment approval (to facilitate an approach from Boscell Road) will also be considered. The Preliminary Grading Plan review is required by section 8-4108(a) of Chapter 4 of the Fremont Municipal Code (FMC).

**Background and Previous Actions:** In September 1991, the Planning Commission recommended approval of a PD designation for a site that includes this property. The proposed use at that time was a Price Club outlet, a warehouse/retail superstore, on two lots in the middle portion of the PD zone. The list of permitted uses attached as conditions of the PD approval included the property now improved with Wendy's and the Shell station to the east (developed in 2002). No development was proposed at that time for the subject site. The City Council approved the Commission's recommendation in October 1991. Conditions for P-91-8 are attached as Informational Exhibit 1.

Subsequently, Price Club was acquired by Costco, which decided to build a warehouse retail outlet elsewhere in Fremont. The portion slated for Price Club then was acquired for development as an office/warehouse (Creative Labs) in 1996.

On April 22, 2004, the Planning Commission recommended approval of the proposed Precise Plan for the retail center, including a proposed menu of service and commercial uses, which awaits City Council consideration.

Two of the three single-story multi-tenant retail buildings would be oriented towards the front portion, with the third in the rear separated by parking spaces. Buildings 1 and 2 in the front are respectively 4,000 and 5,200 square feet, and rear building 3 is 3,500 square feet. The new main access drive will come off of Boscell Road. The easterly terminus of the new access will be just to the north of a proposed outdoor seating area.

The applicant has expressed an interest in obtaining a grading permit and rough grading the site prior to issuance of the building permit for the retail buildings.

**General Plan Conformance:** The existing General Plan land use designation for the project site is General Industrial, Commercial/Industrial overlay. The proposed project is consistent with the existing General Plan land use designation for the project site because conditions of approval would require conformity to the following General Plan Goals, Objectives and Policies applicable to the proposed project:

**Policy NR 6.3.2:** Appropriate control measures shall be required to limit erosion during and immediately subsequent to new construction.

Sec. 8-4100. Purpose and intent of chapter.

- (b) Ensuring that soil will not be stripped or removed from lands in the more scenic parts of the city, leaving the same barren, unsightly, unproductive, and subject to erosion and the hazards of subsidence and faulty drainage;
- (c) Protecting water quality by avoiding pollution of watercourses with nutrients, sediments or other earthen materials generated on or caused by surface runoff on or across private property.
- (d) Encouraging the planning, design and development of building sites in such fashion as to provide the maximum in safety and human enjoyment, while adapting development to and taking advantage of the best use of the natural terrain.

**Grading & Drainage:** The project site is an undeveloped parcel on the northeast corner of Auto Mall Parkway and Boscell Road. The site contains a mound of earth adjacent to Boscell Road. This mound, which rises approximately five feet above grade, appears to be undocumented fill, likely placed during the development of a nearby site. There is also a small drainage inlet (depression) in the northwest corner of the site. The applicant has expressed an interest in obtaining a grading permit and rough grading the site prior to issuance of the building permit for the three retail buildings. In accordance with the Grading Ordinance, the Planning Commission reviews projects seeking a grading permit for grading in excess of 1,000 cubic yards through the preliminary grading plan process.

The preliminary grading plan includes the proposed pads for the retail buildings and formations for the associated parking lot, but the grading permit, when issued, will only permit rough grading of the site and appropriate erosion and sediment

control measures. Site improvements, including but not limited to, the retail buildings, pavement, sidewalks, utilities, and landscaping, will be permitted through the building permit.

The project civil engineer has estimated grading quantities of approximately 5,000 cubic yards of cut with no fill. According to the proposed development plans for the retail center, there is likely to be some minor fill needed to accommodate the retail building pads. Precise grading quantities will be determined prior to issuance of the grading permit.

**Urban Runoff Clean Water Program:** The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The applicant will comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board. Conditions of approval are included to reflect this requirement.

**Environmental Analysis:** A finding is proposed that this project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304(a) of the Guidelines, as a minor alteration of land, including grading on land with a slope of less than 10 percent.

**Response from Agencies and Organizations:** The Alameda County Public Works Agency submitted a letter on February 18, 2004. Comments addressed the storm drainage system and required improvements, water runoff, groundwater pollution protection, and grading. Subsequent submittals by the applicant will be required to address these issues, and are covered by Condition #7, #13 and #15.

The Alameda County Water District submitted a letter on April 21, 2004. The letter identified a monitoring well located close to the southeast corner of the site, and set forth the requirement to either protect or properly destroy the well pursuant to a permit filing with the agency to protect the ground water basin. This requirement is included below in Condition #5.

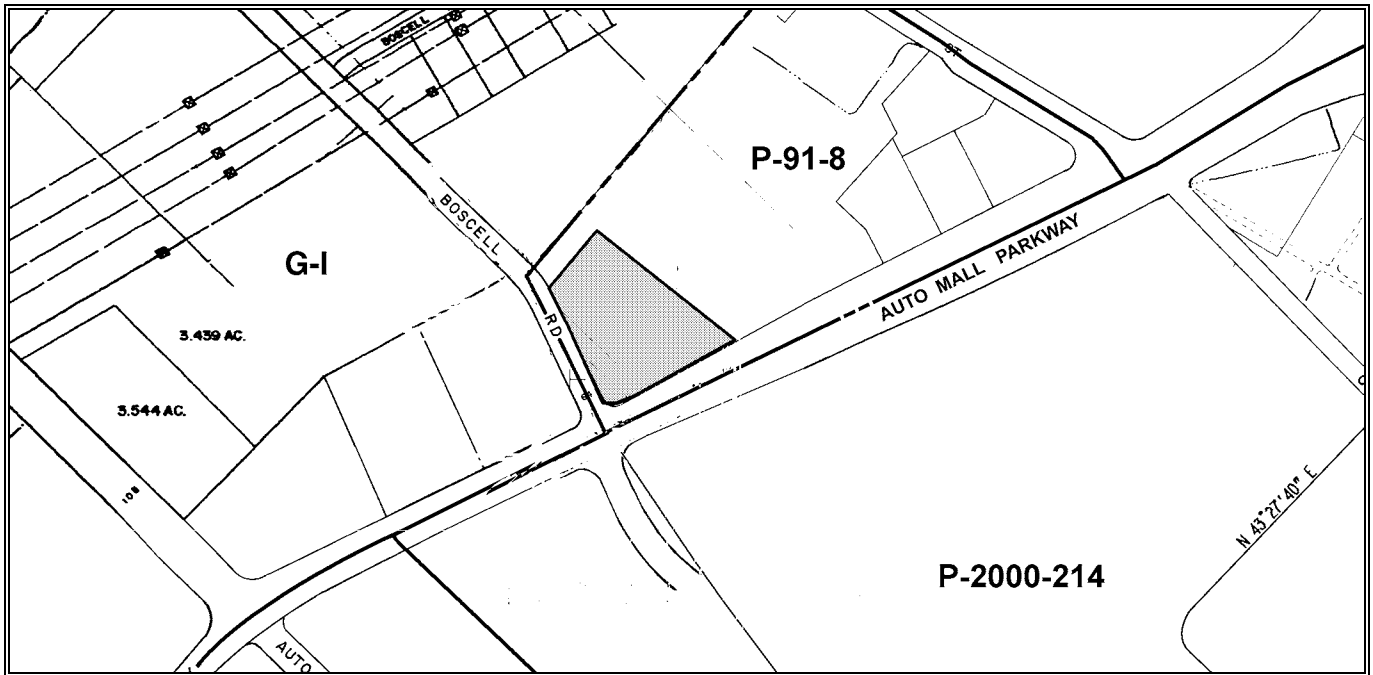
<b>Enclosures:</b>	Exhibit 1	Conditions of Approval for original P-91-8.
	Exhibit "A"	Preliminary Grading Plan (PGP)
	Exhibit "B"	Findings and Conditions of Approval for PGP

<b>Exhibits:</b>	Exhibit "A"	Preliminary Grading Plan (PGP)
	Exhibit "B"	Findings and Conditions of Approval for PGP

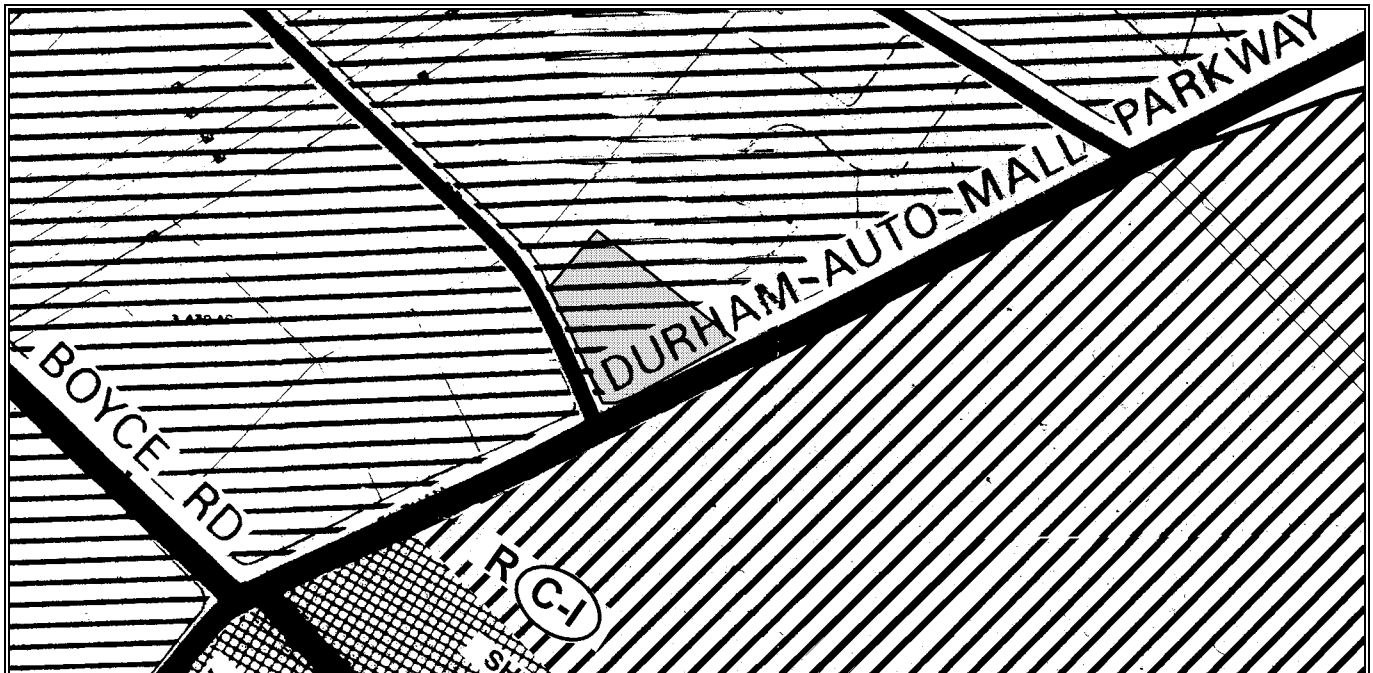
**Recommended Actions:**

1. Hold public hearing.
2. Find that the project has been evaluated the potential for to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Find PLN2004-00199 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Natural Resources Chapter as enumerated within the staff report. The project conforms to the goals and objectives of that chapter.
4. Approve PLN2004-00199, as shown on Exhibit "A", subject to findings and conditions on Exhibit "B".

Existing Zoning  
Shaded Area represents the Project Site



Existing General Plan



## EXHIBIT "B"

### Findings and Conditions of Approval for Fremont Retail PGP NE corner of Auto Mall Parkway @ Boscell Road PLN2004-00199

#### FINDINGS:

1. The proposed project described in the application will not have an appearance, due to the grading, excavation or fill, substantially and negatively different from then the existing natural appearance.

*The perimeter and significant portions of the lot in its "natural appearance" will be enhanced through attractive streetscape and landscaping improvements. The mound on the west side will be graded and exported to facilitate development in compliance with PLN2004-00173 recently recommended for approval by the Commission.*

2. The proposed project described in the application will not result in geologic or topographic instability on or near the site.

*The grading plan will remove an existing mound and ready the site for finish grading for the proposed development of three buildings. The project does not involve grading in areas of geologic or topographic instability.*

3. The proposed project described in the application will not endanger public sewers, storm drains, watercourses, streets, street improvements or other property; will not interfere with existing drainage courses; and will not result in debris being deposited on any public way.

*The design of the improvements and the conditions included below address issues relative to the above.*

4. Conformity, where applicable, to special concerns relating to the adopted seismic safety element and concerns shown on maps issued by the U.S. Geological Survey and the California Division of Mines and Geology; supplemental data and substantiation of conclusions may be required by the public works director upon city review of the reports.

*Neither the City's Safety Element of the General Plan nor the USGS maps identify this area as a concern.*

5. The proposed project described in the application will not unacceptably affect the health, safety or welfare of adjacent residents or landowners, nor the citizens of Fremont.

*This finding was made for the Precise Plan precedent to this application, which is conditioned to assure the plan can be implemented safely.*

#### CONDITIONS OF APPROVAL:

1. The project shall conform with Exhibit "A" (Preliminary Grading Plan) and all conditions of approval set forth herein.
2. Approval of this preliminary grading plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
3. Approval of this preliminary grading plan shall terminate 24 months from the date of approval by the Planning Commission.

4. The developer shall obtain a final grading permit in accordance with the Grading, Erosion, and Sediment Control Ordinance (Chapter 4, Title VIII of the Municipal Code). Grading shall be subject to the approval of the City Engineer.
5. The Alameda County Water District (ACWD) has identified a monitoring well within the project site (Monitoring Well No. 5S/1W-16B002). The grading plans shall include the location of the monitoring well and shall include a note explaining the ultimate disposition of the well. If the monitoring well is to be destroyed, the developer shall first obtain a permit from ACWD. If the monitoring well is to remain during grading and after completion, appropriate well protection measures shall be included with the grading plans.
6. The existing 6" Pear tree adjacent the proposed Building 3 and closest to Boscell Road shall be preserved. Mitigation if the tree is damaged or removed is a 36" Box Large Canopy Tree in the same location. The grading plans shall include tree preservation measures, which shall be subject to review and approval of the City Landscape Architect.
7. The applicant shall provide for a functional system to control erosion and siltation during and after grading subject to review and approval by the City Engineer or Alameda County Flood Control and Water Conservation District. An erosion and sediment control plan shall be included as part of the grading plans.
8. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
9. The developer shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.
10. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
11. Prior to issuance of a building or grading permit for land disturbance greater than one acre, the developer is to provide evidence that a Notice of Intent has been filed and with the State of California Water Resources Control Board. Evidence shall include the WDID number assigned by the State. The developer is responsible for insuring that all contractors are aware of all storm water quality measures contained in the Storm Water Pollution Prevention Plan (SWPPP).
12. The project plans shall include storm water measures for the operation and maintenance of the project for the review and approval of the City Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on site that effectively prohibit the entry of pollutants into storm water runoff.
13. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and that such measures are implemented. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
14. The property owner is responsible for litter control and for sweeping of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged to the storm drain.
15. The developer and/or contractor shall notify Underground Service Alert (U.S.A.) at 1-800-227-2600 at least two working days before beginning any excavation for this project. A prominent note shall be included in the project plans requiring the notification of U.S.A.
16. The following are relevant conditions of approval from Planned District (P-91-8), are incorporated herein, and shall be complied with prior to issuance of the grading permit, subject to review and approval of the City Engineer:

17. Thirty days prior to commencement of any grading or construction, a site investigation, subject to the approval of the Community Development Director, shall be completed by a qualified wildlife biologist to determine if burrowing owls are present. If a determination has been made burrowing owls are indeed present, all work shall halt until the wildlife biologist has recommended appropriate actions to be taken to protect the owls. If relocation is found to be appropriate by the wildlife biologist, the owls shall be relocated according to the biologist's recommendations.

18. Construction activities shall be limited to the following hours of operation:

*7 a.m. to 7 p.m. Monday through Friday*

*9 a.m. to 6 p.m. Saturday and Sunday*